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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 DANIEL J. LANG,

11 Petitioner,

12 v .

13 RICHARD J. HERNANDEZ,
14 Warden,

15 Respondent.

) Case No. CV 06-4927 RGK(JC)

) (~~PROPOSED~~)

) ORDER ADOPTING FINDINGS,
) CONCLUSIONS, AND
) RECOMMENDATIONS OF UNITED
) STATES MAGISTRATE JUDGE

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17 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition for Writ of
18 Habeas Corpus by a Person in State Custody (the "Petition") and all of the records
19 herein, including the attached Report and Recommendation of United States
20 Magistrate Judge ("Report and Recommendation"), and petitioner's objections to
21 the Report and Recommendation ("Objections"). The Court has further made a *de*
22 *novo* determination of those portions of the Report and Recommendation to which
23 objection is made.¹ The Court concurs with and adopts the findings, conclusions,
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26 ¹This Court, in an exercise of its discretion, declines to consider new evidence and
27 arguments presented for the first time in the Objections. See United States v. Howell, 231 F.3d
28 615, 621 (9th Cir. 2000), cert. denied, 534 U.S. 831 (2001). Moreover, to the extent petitioner
asserts that the Court should address the merits of the Petition because he is "actually innocent,"
he is incorrect as the Ninth Circuit has recently determined that there is no "actual

(continued...)


1 and recommendations of the United States Magistrate Judge except footnote 24,²
2 and overrules the Objections.

3 IT IS HEREBY ORDERED: (1) respondent's Motion to Dismiss is granted
4 to extent it seeks dismissal of petitioner's claim that the Board of Prison Terms
5 refused to honor petitioner's plea agreement, and is otherwise denied as moot;
6 (2) the remaining claims in the Petition are dismissed as they are successive, and
7 this Court is without jurisdiction to consider them; and (3) that Judgment be
8 entered denying the Petition and dismissing this action.

9 IT IS FURTHER ORDERED that the Clerk serve copies of this Order, the
10 United States Magistrate Judge's Report and Recommendation, and the Judgment
11 herein on Petitioner and on counsel for Respondent.

12 LET JUDGMENT BE ENTERED ACCORDINGLY.
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14 DATED: September 29, 2010

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16 _____
17 HONORABLE R. GARY KLAUSNER
18 UNITED STATES DISTRICT JUDGE
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23 ¹(...continued)
24 innocence" exception that serves as a gateway through the statute of limitations to the merits of a
25 petitioner's claims. Lee v. Lampert, 610 F.3d 1125, 1133 (9th Cir. 2010).

26 ²Although it has no impact on the analysis and outcome, the Court notes that subsequent
27 to the issuance of the Report and Recommendation, the United States Supreme Court held that
28 28 U.S.C. § 2244(d) is subject to equitable tolling in appropriate cases. Holland v. Florida, 130
S. Ct. 2549, 2560 (2010). Accordingly, footnote 24 of the Report and Recommendation is no
longer accurate.